UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
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Date Issued: July 21, 1997

Case No.: 97-JTP-2

In the Matter of:

CALIFORNIA HUMAN DEVELOPMENT CORPORATION,
Complainant

v.

U.S. DEPARTMENT OF LABOR,
Respondent

Before: JOHN M. VITTONE
Chief Administrative Law Judge

DECISION AND ORDER GRANTING GRANT OFFICER'S MOTION TO DISMISS

This case arises under the Job Training Partnership Act (JTPA), 29 U.S.C. §1501 *et seq*. and the applicable regulations set forth at 20 C.F.R. Parts 633 and 636.

On August 25, 1995, the United States Department of Labor (DOL) issued a Final Determination pursuant to an audit of the programs funded under the JTPA and operated by the California Human Development Corporation (CHDC). Among the findings in the Final Determination, was that CHDC had expended $1,209,238.00 in unallowable costs under its grant. By letter dated November 7, 1996, and received by this Office on December 9, 1997, CHDC requested an administrative hearing to contest the findings set forth in the Final Determination. This Office issued a Notification of Receipt of Request for Hearing and Prehearing Order on January 15, 1997. The Order set forth deadlines for filing the administrative file and a Notice of Intent to Participate. Following several requests for, and grants of extension of time by DOL to file Prehearing information, on May 27, 1997, DOL filed a Motion to Stay Proceedings[1] and Motion to Dismiss.

The Motion to Dismiss is premised on a lack of jurisdiction under section 166(a) of the JTPA, 29 U.S.C. §1576(a) and the tolling of the statute of limitations pursuant to 20 C.F.R. §636.10(a)(1). The resolution of whether the statute of limitations has run for the filing of a request for an administrative hearing is not necessary in this case. Even assuming, *arguendo*, that CHDC's request for hearing is timely, this Court does not have jurisdiction to hear this matter.

[1] Because the Motion to Dismiss is hereby Granted, the Motion to Stay Proceedings is Moot.

Section 1576(a) states, in pertinent part, that:

> Whenever any applicant for financial assistance under this chapter is dissatisfied because the Secretary has made a determination not to award financial assistance in whole or in part to such applicant , the applicant may request a hearing before an administrative law judge of the Department of Labor. A similar hearing may also be requested by any recipient upon whom a corrective action or a sanction has been imposed by the Secretary.

29 U.S.C.A. §1576(a).

DOL argues that the Final Determination does not contain any corrective action or a sanction imposed by the Secretary; therefore, CHDC is not entitled to request a hearing nor does this Court have jurisdiction (Motion at 3, 4).[2] The relevant portion of the Final Determination states that:

> The Final Determination . . . identifies a total amount of unallowable costs. Normally, this amount would be recorded as a "receivable" on the books of record of the agency, and subject to collection action. In this particular case, however, any debt arising from the resolution of audit report 99-1-2710-56-285-02[3] is, by operation of law, discharged in bankruptcy.

In its Memorandum, DOL cites to ***County of Los Angeles v. U.S. Department of Labor***, 891 F.2d 1390 (9th Cir. 1989). In that matter, the State of California (State) found disallowed costs under a JTPA grant administered by the County of Los Angeles (County). Pursuant to a settlement agreement, the State agreed to accept stand-in costs and waive repayment of a majority of the disallowed amount. *Id.* at 1392. The State then requested a waiver from the DOL and requested that stand-in costs be permitted for other disallowed costs incurred by the County. *Id*. The DOL did not grant an entire waiver, and both the State and the County requested a hearing before an administrative law judge. Pursuant to a Motion to Dismiss filed by DOL, the Administrative Law Judge dismissed the County as a party finding that because the DOL did not take corrective action or impose sanctions directly upon the County it was not entitled to a hearing. *Id*. at 1394. This holding was affirmed by the Ninth Circuit.

In its opinion, the Ninth Circuit rejected the notion that the County was entitled to a hearing because it was sanctioned, *albeit* indirectly, through the sanctioning of the State. Thus, in order to have standing to request a hearing, a party must be directly sanctioned by the Department of Labor. This must be the correct interpretation given the wording of the

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[2] The Final Determination does not involve an order by the Secretary not to award financial assistance to an applicant and does not fall within the language of the first sentence of §1576(a).

[3] As noted in DOL's Memorandum in Support of its Motion to Dismiss, this number is actually the grant number and not the audit report number. The correct audit report number, noted correctly in the Final Determination, is 18-95-008-03-365.

statute; that is, "[a] similar hearing may also be requested by a recipient upon whom a corrective action or sanction has been imposed by the Secretary." 29 U.S.C.A. §1576(a) (emphasis added). The operative word here being imposed which indicates that some adverse action must be directed at the aggrieved party. *See also*, ***Northwest Pennsylvania Training Partnership Consortium, Inc. v. U.S. Department of Labor***, Case No. 89-3670, slip op. (3rd Cir. April 11, 1990).[4] Here, DOL was foreclosed from imposing any adverse measures against CHDC because of superseding Bankruptcy laws. CHDC correctly notes that the term "sanction" is not defined in either the Act or the regulations, however, even conceding that a sanction need not be monetary in nature, the various interpretations that the Supreme Court has given the term "sanction" indicate that a "sanction" requires a direct act that has a disciplinary effect (*See* CHDC response at 4, 5).

DOL's mere finding of a violation by CHDC does not constitute a sanction. In its Final Determination, the DOL stated that had the CHDC not been shielded by the Bankruptcy laws, it would sanction CHDC by the amount of unallowable costs by placing that amount on its books as a receivable. I do not find, as argued by Complainant, that this is a distinction without a difference. The Ninth Circuit's finding that a sanction requires the direct imposition of liability requires that a sanction, to be a sanction, must have "teeth." The mere foreshadowing of what would be were the facts different does not rise to the level of a sanction as envisioned by the Act and regulations.[5] Accordingly,

I find and conclude that this Office does not have jurisdiction to hear this matter, and hereby **GRANT** the Department of Labor's Motion to Dismiss.

JOHN M. VITTONE
Chief Administrative Law Judge

JMV/jlh

[4] In ***Northwest Pennsylvania Training Partnership Consortium, Inc.***, Northwest administered JTPA programs pursuant to a grant agreement with the Commonwealth of Pennsylvania. After an audit found that Northwest had misspent JTPA funds, Pennsylvania waived the collection, and then petitioned the DOL to permit it (Pennsylvania) to forego collection of the disallowed costs from Northwest. The DOL did not grant Pennsylvania's request and Northwest filed a request for a hearing. Pursuant to a Motion to Dismiss filed by DOL, the Administrative Law Judge dismissed for lack of jurisdiction. The Court Of Appeals for the Third Circuit affirmed finding that DOL's action to not relieve Pennsylvania from its obligation to seek the repayment of JTPA funds misspent by Northwest is not a sanction imposed or a corrective action upon Northwest.

[5] CHDC's alternative argument that it was sanctioned by the DOL's mere finding and publishing of CHDC's alleged misallocation of grant funds because it will adversely affect its ability to receive future grant money is not ripe for consideration and shall not be addressed.